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NTSB Order No. EA-5076

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of January, 2004

_____)	
MARION C. BLAKEY)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15534
v.)	
)	
TILAK S. RAMAPRAKASH,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

On remand from the United States Court of Appeals for the District of Columbia Circuit, we revisit respondent's appeal of the written order of Administrative Law Judge William A. Pope, II, denying respondent's motion to dismiss the Administrator's complaint alleging a violation of section 61.15(e) of the Federal Aviation Regulations ("FARs").¹ In accordance with the Court's

¹ FAR section 61.15, 14 C.F.R. Part 61, states, in pertinent part, the following:

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clear mandate, we grant the appeal.

The Administrator's complaint alleged:

1. At all times material herein you were and are now the holder of Airline Transport Pilot Certificate No. 312763777.

2. On or about February 25, 1997, you were convicted in the Doraville Municipal Court, Doraville, Georgia, of Driving Under the Influence (DUI).

3. That conviction is an alcohol-related motor vehicle action which you are required to report to the Federal Aviation Administration (FAA), Civil Aviation Security Division, not later than 60 days after the motor vehicle action.

4. Incident to paragraphs 2 and 3 above, you did not report that motor vehicle action.

The Administrator alleged that the failure to report the 1997 DUI was a violation of section 61.15(e), and sought a 30-day suspension of all airman certificates held by

(continued . . .)

Sec. 61.15 Offenses involving alcohol or drugs.

* * * * *

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AMC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action....

(f) Failure to comply with paragraph (e) of this section is grounds for:

* * * * *

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

respondent. Respondent, in his answer to the Administrator's complaint, admitted the allegations in each paragraph of the complaint and admitted a violation of section 61.15(e), but asserted that, nonetheless, the "action is barred" by the stale complaint rule.²

In our previous opinion and order, Administrator v. Ramaprakash, NTSB Order No. EA-4947 (2002), we rejected respondent's claim that the stale complaint rule required that the Administrator's charges be dismissed, and upheld the law judge's decision affirming the Administrator's charges. In doing so, we relied on our decision in Administrator v. Ikeler, NTSB Order No. EA-4695 (1998), which determined that due diligence for

² The Stale Complaint Rule (49 C.F.R. § 821.33) states, in pertinent part:

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint....

purposes of applying our stale complaint rule in the context of certain alleged reporting violations should be judged from the point when comparison of National Driver Register ("NDR") information and the results of an "NLETS" national database query indicated that the airman incurred an alcohol-related motor vehicle action. Thus, in the present case, we concluded that the Administrator proceeded with due diligence, since the Administrator issued a Letter of Investigation to respondent six days after her NLETS query resulted in the discovery of a match, and, therefore, that the stale complaint motion was properly denied. In dicta, however, we also sought to explain why a respondent who admittedly violated FAR 61.15(e) -- a regulation that mandates self-disclosure, and which is supported by an enforcement program analogous to the Internal Revenue Service's reliance on audits to ensure full disclosure in the filing of accurate tax returns -- should not, as a matter of policy, be the beneficiary of the stale complaint rule under the facts in this record. In short, we believed that it was fair and consistent with precedent that the Administrator's due diligence not be measured from the time she received arguably constructive knowledge of a reporting violation, but, rather, from the time her actual comparison of available information revealed that an airman had incurred an alcohol-related motor vehicle action.

The Court disagreed. The Court held that we "departed from [our] ... longstanding requirement of prosecutorial diligence in stale complaint cases." See Ramaprakash v. Federal Aviation

Administration, 346 F.3d 1121 (D.C. Cir. 2003).³ We read the Court's opinion to stand for the proposition that in FAR 61.15(e) cases such as this one, the Administrator's due diligence, for purposes of a challenge under the stale complaint rule, shall be assessed by reference to the time when FAA personnel receive NDR information which may include information about an airman that could support a conclusion that reporting requirements had not been observed. We therefore conclude that the Administrator must be found to have failed to meet the applicable due diligence standard in the present case, for, after receiving an NDR tape with information about respondent on May 16, 1997, she did not issue her Letter of Investigation (as a result of an NLETS query conducted a few days beforehand, and a subsequent confirmation that respondent had not reported the alcohol-related motor vehicle action) until February 10, 1998. Respondent's stale complaint motion therefore should have been granted.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The Administrator's Order of Suspension is dismissed.

ENGLEMAN-CONNERS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

³ Moreover, the Court held that we improperly "considered the nature and seriousness of [respondent's] FAR violation in determining whether the FAA had shown good cause [under the stale complaint rule]" and that we should not have engaged in an "analysis of the role that prejudice plays under the stale complaint rule." Id.